

Exhibit 12

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary
Judgment as to Defendant Mylan

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

- - - -

IN RE:)	
PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	
LITIGATION)	
)	
STATE OF CALIFORNIA,)	
ex rel. Ven-A-Care,)	MDL No. 1456
Plaintiff,)	Master File No.
)	01-12257-PBS
-vs-)	Subcategory Case
)	No. 06-11337
ABBOTT LABORATORIES, INC.,)	
et al.,)	
Defendants.)	

- - - -

VIDEOTAPE 30 (B) (6) DEPOSITION OF: BRIAN ROMAN

- - - -

DATE: June 10, 2009

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1 a specific communication by Mylan to California,
2 other than through the transmission of AMP data,
3 that Mylan said that that way to California.

4 Q. And what is it about the transmission
5 of AMP data that would tell California that the
6 AWP was substantially higher?

7 A. Well, the --

8 MR. ESCOBAR: Objection to the form.

9 THE WITNESS: When California sees a
10 rebate amount or AMP information they would see
11 that that is not the same as AWP, in all
12 likelihood it's lower than AWP and that would
13 lead one to conclude that the AWP is higher.

14 BY MR. MILLER:

15 Q. Sort of a reverse engineer kind of
16 maneuver?

17 MR. ESCOBAR: Objection to the form.

18 THE WITNESS: I don't know what you
19 mean by that.

20 MR. MILLER: All right.

21 BY MR. MILLER:

22 Q. I know you've testified about this

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1 previously as relation to Texas and Wisconsin, I
2 believe, but I want to make sure I get it for
3 California. And that is, do you know of Mylan's
4 knowledge and understanding of the laws,
5 practices and policies of California's State
6 Medicaid agency, Medi-Cal, regarding the
7 reimbursement for Mylan's drug products,
8 including Mylan's knowledge and understanding
9 concerning Mylan's use of published AWP's, Mylan's
10 understanding of its obligation, if any, to
11 understand such laws, practices and policies?
12 Let me break that down a little bit.

13 A. Can you just tell me what topic, so I
14 can follow along?

15 Q. 3.

16 MR. ESCOBAR: 3?

17 MR. MILLER: 3.

18 MR. ESCOBAR: Okay.

19 BY MR. MILLER:

20 Q. Here's the first question. I'm not
21 sure I understood your earlier testimony, but I
22 think you said you weren't sure how California

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1 reimbursed, so that you don't know whether
2 Medi-Cal uses published AWP's?

3 A. No, I don't think I said that. I
4 think what I said is I actually have seen a
5 document that was put out by California that
6 showed some of the changes in their reimbursement
7 approach over time and it did show how California
8 has decided to, you know, change that
9 reimbursement formula from time to time. So I
10 have seen that and I -- I've been testifying
11 about it, actually.

12 Q. So do you -- are you aware that
13 California uses AWP as a basis for reimbursement?

14 MR. ESCOBAR: Objection to the form.

15 THE WITNESS: I don't agree with the
16 way you put that. I believe what California says
17 they do is they have two components to the
18 reimbursement amount. One of those components is
19 something that California calls estimated
20 acquisition cost and then they will look at a
21 number of different information points to come up
22 with that and they'll pick the lowest of them.

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1 MR. ESCOBAR: Objection to the form.

2 THE WITNESS: Okay, you've broadened
3 that question in a somewhat confusing way.

4 BY MR. MILLER:

5 Q. Okay. What did Mylan -- what does
6 Mylan understand its reporting obligations,
7 whether it's directly to the State of California
8 or just to a reporting agency that California
9 then relies upon? 141:19-22,

10 A. Well, Mylan, under the Medicaid
11 program, and, actually under the agreement that
12 we've signed with the government, including the
13 states and California, has a section in it that
14 says what Mylan's responsibilities are. And
15 those responsibilities, in relation to price
16 reporting, are to calculate and report the
17 average manufacturer price every three months,
18 and we do that.

19 Q. It's only that, the average
20 manufacturer's price? What about -- you do
21 report AWP's, correct?

22 A. I don't believe we report AWP's to

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1 California.

2 Q. No, to a reporting agency, like First
3 Data Bank or Medi-Span.

4 A. Oh, we do communicate AWP numbers to
5 reporting services like First Data Bank, sure.

6 Q. And do you know what the purposes of
7 those reporting services are?

8 A. The purposes of the reporting service?

9 Q. Yeah, what do they do with the AWP?

10 MR. ESCOBAR: Objection to the form and
11 beyond the scope.

12 THE WITNESS: I understand that they
13 publish lists of drugs and they show, in some
14 cases, WAC; some cases they show AWP; some of
15 the publications call it something else, but they
16 make those available to their subscribers.

17 BY MR. MILLER:

18 Q. Are you aware that certain states use
19 AWP as reported by Mylan to these reporting
20 services as a basis for reimbursement?

21 MR. ESCOBAR: Objection to the form.

22 THE WITNESS: I think they could use

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1 it. I think, though, you'd have to look at
2 particular reimbursement that was done and how
3 AWP does or doesn't fit into that reimbursement
4 for that drug.

5 For example, again, in the California
6 system it says that they'll look to a number of
7 different points, including what the pharmacies
8 themselves is charging to the general public and
9 they'll pick the lowest of those points and use
10 that as the basis for part of the reimbursement
11 to pharmacies.

12 BY MR. MILLER:

13 Q. Are you aware of any reimbursement
14 that is done based on AWP, for Mylan's products?

15 A. Mylan doesn't have much visibility
16 into the reimbursements that its customers are
17 receiving. If you're talking about Medicaid
18 programs, and in California in particular, those
19 programs do make it known how they will reimburse
20 a pharmacy for drugs that are dispensed to
21 Medicaid beneficiaries, and I've talked about
22 California's and I'm not of the view -- Mylan's